

23372

IN THE U.S. PATENT AND TRADEMARK OFFICE

Inventor	Jakob SCHNEIDER et al	
Patent App.	10/552,821	
Filed	6 October 2005	Conf. No. 9460
For	RECLOSABLE SHOPPING BAG	
Art Unit	3782	Examiner Pascua, J
Hon. Commissioner of Patents		
Box 1450		Appealed 06-Aug-09
Alexandria, VA 22313-1450		

SECOND APPEAL BRIEF UNDER 37 CFR 41.37

Now come appellants by their duly authorized attorney and resubmit submit their brief under the provisions of 37 CFR 41.37.

I. REAL PARTY IN INTEREST

The real party in interest here is the assignee, Lemo Maschinenbau GmbH, as evidenced by an assignment recorded 06 October 2005 and filed under reel 017884 frame 0632.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-4, 6, 8, 9, and 12 have been canceled, leaving five claims, numbered 5, 7, 10, 11 and 13, all of which are appealed and shown in the attached Claim Appendix. Claim 13 is independent and each of claims 5, 7, 10, and 11 depends directly from independent claim 13.

IV. STATUS OF AMENDMENTS AFTER FINAL ACTION

A single amendment after final action made no changes to the scope of the claims and instead only dealt with formal problems and typographical errors, deleted some new matter, and canceled a redundant claim. The amendment after final thus cleared up all the §112 issues.

According to the Advisory Action of 17 June 2009, this amendment was entered for purposed of appeal. The claims as shown in the Claim Appendix represent the state of the claims as thus amended.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Since the claims have been carefully drafted without legal jargon (e.g. 'said') and to be as succinct as possible, the invention will be described below in the words of the claims and with parenthetical references to the specification and drawing as filed 06 October 2005.

Thus main claim 13 describes a shopping bag comprising:
a pair of thermoplastic side panels 6 and 7 (spec. p. 3, 1. 24; FIG. 1 and 2) having welded together side edges 8 and 9 (spec. p. 3, 1. 24 & 25; FIG. 1 and 2), top edges defining a fill opening 10 (spec. p. 3, 1. 10; FIG. 1 and 2, inner faces turned toward each other, and outer faces turned away from each other;
a closure 2 (spec. p. 3, 1. 22; FIG. 1 and 2) having a pair of interfittable profile strips welded to the inner faces of the side panels 6 and 7 at the top edges and a slider 3 shiftable across the profile strips to fit together and separate the strips; and
a pair of flexible thermoplastic handle patches 15 and 16 (spec. p. 5, 1. 23; FIG. 2) each formed with a hand hole 16 (spec. p. 5, 1. 23; FIG. 2) and each welded at a respective one of the top edges to the outer

face of a respective one of the side panels 6 and 7 so as to normally extend downward away from the top edge and lie flatly against the respective outer face, the patches 15 and 16 being foldable upward such that the hand holes 16 lie above the top edges in alignment with each other.

Claim 5 states that the side panels 6 and 7 are made of an insulating foil.

Claim 6 recites how the hand holes 16 are each made as an opening punched in one of the respective handle patches 15 and 16.

In claim 10 the handle patches are described as being welded on directly below the closure 2.

Finally, claim 16 states that the handle patches 15 and 16 are welded on together with the closure 2.

This construction is extremely easy to package and ship. The handles naturally lie flat against the face of the bag prior to use, but are easily folded up by the consumer and used to carry the bag when needed. This is a very simple construction that has proven very popular in use.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

All the appealed claims 5, 7, 10, 11 and 13 are rejected under §103(a) on the combination of US 7,207,716 of Buchanan and Japanese 3-29753 or Nagaoka. Thus there is only a single rejection based on two references and only a single issue.

VII. ARGUMENTS

Buchanan shows in FIGS. 3 and 4 a trash-compacter bag where handles 18 are apparently poked through middle regions of the side panels and welded to the inner faces thereof. In addition these handles, although they can be flopped over as shown in FIG. 3, normally lie against the outer face extending up toward the upper edge of the side panels as shown in FIG. 1, and in fact they do not even reach the upper edge and cannot extend past it. Thus, patches "each welded at a respective one of the top edges to the outer face of a respective one of the side panels" are not shown, nor are handles that lie against the outer faces and extend downward.

Nagaoka shows in FIGS. 1, 3, 4, 6, and 7 a bag where handles are welded against the inner faces of the side panels and always extend up past the upper edges of these side panels. Thus patches "welded at a respective one of the top edges to the outer face" are not shown or suggested. Nor are patches that when thus

welded "extend downward away from the top edge." Nagaoka only shows this one embodiment so there is no suggestion in this reference to otherwise mount or orient the handle patches.

Thus neither Buchanan nor Nagaoka shows a handle welded to an outer face and extending downward from a top edge. Thus specifically claimed features of the instant invention are lacking in both of the cited references. Since both references show a handle apparently welded to an inner face and extending upward, there is clearly no suggestion to otherwise mount the handles, so the §103 rejection on Buchanan and Nagaoka is incorrect and must be withdrawn.

This is therefore not a typical §103 rejection where the references, somehow or other, show all of the claimed features, but a rejection where some of the claimed features are neither shown nor suggested by any of the references. Thus even assuming perfect combinability, claimed features are not shown or suggested.

CONCLUSION

Critical claimed features of the invention are neither shown nor suggested in the applied art. The §103 rejection is therefore unfounded and must be reversed.

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Enclosure:

Appeal fee already paid by EFS

VIII. CLAIM APPENDIX

1 5. The shopping bag according to claim 13 wherein the
2 side panels are made of an insulating foil.

1 7. The shopping bag according to claim 13 wherein the
2 hand holes are each made as an opening punched in the respective
3 handle patches.

1 10. The shopping bag according to claim 13 wherein the
2 handle patches are welded on directly below the closure.

1 11. The shopping bag according to claim 13 wherein the
2 handle patches are welded on together with the closure.

1 13. A shopping bag comprising:

2 a pair of thermoplastic side panels having welded
3 together side edges, top edges defining a fill opening, inner faces
4 turned toward each other, and outer faces turned away from each
5 other;

6 a closure having a pair of interfittable profile strips
7 welded to the inner faces of the side panels at the top edges and a
8 slider shiftable across the profile strips to fit together and
9 separate the strips; and

10 a pair of flexible thermoplastic handle patches each
11 formed with a hand hole and each welded at a respective one of the
12 top edges to the outer face of a respective one of the side panels
13 so as to normally extend downward away from the top edge and lie
14 flatly against the respective outer face, the patches being
15 foldable upward such that the hand holes lie above the top edges in
16 alignment with each other.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.